DOCUMENT RESUME

ED 231 901 UD 022 842

AUTHOR Cambron-McCabe, Nelda H.
TITLE Recent Sex Discrimination Litigation: Application of Title IX to Employment and Extension of Wage Discrimination Claims Under Title VII.
PUB DATE Apr 83
NOTE 23p.; Paper presented at the Annual Meeting of the American Educational Research Association (Montreal, Quebec, Canada, April 11-15, 1983).
PUB TYPE Information Analyses (070) -- Legal/Legislative/Regulatory Materials (090) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Administrator Responsibility; Court Litigation; Court Role; Educational Administration; *Employed Women; Employment Practices; *Federal Legislation; *Salary Wage Differentials; *Sex Discrimination
IDENTIFIERS *Civil Rights Act 1964 Title VII; *Title IX Education Amendments 1972

ABSTRACT

The administration of public schools has been affected by Federal legislation that prohibits employment discrimination on the basis of sex. Two recent Supreme Court decisions that have expanded the rights of female employees under Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964 have led to renewed efforts to combat sex based employment discrimination. This paper reviews recent litigation applying Title IX to employment and extending the scope of Title VII in wage discrimination controversies. Two cases are reviewed: (1) the 1982 Supreme Court decision in "North Haven (Connecticut) Board of Education v. Bell," in which the court interpreted the Title IX statutory language as including employees; and (2) the Gunther decision of 1981, in which the court ruled that the scope of Title VII in wage disputes is not bound by the "equal work" principle of the 1963 Equal Pay Act (a law prohibiting employers from discriminating on the basis of sex by paying different wages to employees for jobs requiring equal skill, effort, and responsibility). The paper concludes that court decisions have not clarified the comparable worth concept, and suggests that discriminatory practices that are not remediated can result in potential liability for school administrators. (AOS)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
✓ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Nelda H. Cambron-McCabe
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED231901

UD 022 842

RECENT SEX DISCRIMINATION LITIGATION

Application of Title IX to Employment and Extension of Wage Discrimination Claims Under Title VII

Nelda H. Cambron-McCabe
Miami University (Ohio)

American Education Research Association
Division A Symposium
Montreal
April 11-15, 1983

The administration of public schools continues to be affected by federal legislation prohibiting employment discrimination on the basis of sex. Renewed efforts to combat sex-based employment discrimination have been prompted by two recent United States Supreme Court decisions that have expanded the rights of female employees under both Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights of 1964. This paper involved an examination of the recent litigation applying Title IX to employment and extending the scope of Title VII in wage discrimination controversies.

Title IX

Title IX provides that:

> No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .[1]

Numerous issues have plagued women's rights advocates attempting to use Title IX to achieve equity in educational and employment practices in schools and colleges. Two recent controversies have concerned Title IX's protection of employees and the definition of an educational program or activity.

Application to Employment

With the United States Supreme Court's 1982 decision in North Haven Board of Education v. Bell, Title IX was revitalized as a means of challenging sex discrimination in employment.[2] Extensive controversy has surrounded the act regarding whether Title IX applies to employees as well as students. Prior to

the Supreme Court's ruling, federal courts were split on the employment issue. Four federal appellate courts and a number of federal district courts had interpreted Title IX to cover only students, and held that the Department of Education had exceeded its authority in regulating employment.[3] Two appellate courts, however, had held that Title IX encompassed both students and employees.[4] This ambiguity led the Department of Education in 1980 to suspend all investigations of sex-based employment discrimination claims for more than two years. At the time the North Haven decision was rendered, over two hundred complaints were pending.

The question before the Supreme Court in North Haven was the validity of the employment-related regulations issued by the Department of Health, Education and Welfare pursuant to Title IX. In this case, two Connecticut school boards challenged the authority of HEW to regulate employment practices, maintaining that "persons" specified in Title IX referred to students. The Second Circuit Court of Appeals disagreed and ruled that the employment regulations were within the scope of Title IX. The Supreme Court affirmed.

In ruling that Title IX prohibits employment discrimination, the Supreme Court interpreted the statutory language as including employees since they were not expressly excluded. As the Court noted, Congress could have restricted coverage of the act simply by substituting the word "student" for "persons." The Court further substantiated its interpretation through the legislative history of the act. Although background testimony and reports are sparse, comments of the amendment's sponsor, Senator Bayh, clearly indicated that employment discrimination was a crucial aspect. He stated during debate on the day the proposal passed that,

> [w]e are dealing with three basically different types of discrimination here. We are dealing with discrimination in admission to an institution, discrimination of available services or studies within an institution once students are admitted, and discrimination in employment within an institution, as a member of a faculty or whatever. [emphasis added by Court][5]

Other corroborating evidence noted by the Court was the omission of employment from the law's list of exceptions, the failure of Congress to disapprove the regulations addressing employment, and several unsuccessful attempts to amend the act to exclude employment discrimination.

A second issue addressed, but not resolved, by the Supreme Court in North Haven was the program-specific nature of Title IX. The Court rejected the second circuit court's implication that the regulatory authority of the act extends beyond educational programs receiving direct federal aid. According to the Court, only individuals employed in programs receiving federal aid come within the protection of Title IX. Consequently, funds can be terminated only in specific programs.

Interpretation of Educational Program and Nature of Financial Assistance

Although the Supreme Court established that Title IX is program-specific, it did not define what constitutes a program or what type of aid is considered federal financial assistance. Federal courts, faced with resolving these issues, have rendered divergent opinions with some courts adopting the programmatic approach while others follow the institutional approach.

The Sixth Circuit Court of Appeals concluded that the programmatic approach must be used in Title IX discrimination claims.[6] This lawsuit resulted from the refusal of Hillsdale College, a private institution, to comply with a request by

HEW to sign an "assurance of compliance," stating that the college's educational programs and activities would be operated in accordance with Title IX and its regulations. The college refused, claiming that it did not operate "educational programs or activities receiving federal financial assistance" and, therefore, did not come under the jurisdiction of Title IX. HEW maintained, however, that the entire institution was a recipient of federal financial aid since its students received federal loans and grants. Under this view, HEW said that the institution as a whole constituted the educational program. The appellate court rejected HEW's position. First, the court noted that Congress had clearly defined an educational institution in other sections of the law and that educational program could not be equated with educational institution. Further, prior to the adoption of Title IX in 1972, Congress had failed to adopt an amendment that would have prohibited all discrimination in an institution receiving federal funds. The appellate court concluded that Hillsdale College was a recipient of federal aid but only the student aid program was subject to Title IX regulation.[7]

Several lower federal courts have adhered to similar programmatic reasoning. For example, a Texas federal district court refused to consider student financial aid as directly benefitting the school's athletic program.[8] The court concluded that

> [t]he type of assistance relied on by Plaintiffs results in some benefit, however remote and indirect, to every program at West Texas State University. Were the court to adopt Plaintiffs' argument, the programmatic construction of Title IX would be rendered nugatory, because every program or activity at the university would be subject to Title IX. . . . In order for the

strictures of Title IX to be triggered, the federal financial assistance must be direct.[9]

Similarly, a Virginia federal district court held that the Department of Education did not have the authority to investigate the athletic program of a private university where the program did not receive direct federal financial assistance.[10]

In contrast to the majority of courts, the Third Circuit Court of Appeals adopted an expanded definition of federally-assisted educational programs. In 1982 the court declared that two private higher education institutions came within the jurisdiction of Title IX because their students received federal financial aid.[11] The first case, Grove City College v. Bell, involved a college's refusal to sign an assurance of compliance.[12] Relying upon legislative and post-enactment history, the appellate court concluded that student financial aid constituted federal financial assistance under Title IX. The court placed substantial weight on post-enactment history, especially Congress's specific rejection of legislative amendments that would have delimited the Department of Education's broad interpretation of federal assistance. In resolving the definition of educational program, the court reasoned that indirect or non-earmarked aid cannot be traced to individual educational components of an institution but rather the funds benefit the entire institution and therefore the institution must be considered the program. The third circuit court reiterated this position a month later in Haffer v. Temple University, holding that Temple's athletic program can be regulated by Title IX because it benefits indirectly from federal grants and contracts.[13]

With conflicting rulings, the Supreme Court has accepted the Grove City College case for review.[14] If federally-assisted programs are defined narrowly, few activities of schools and colleges would be subject to Title IX coverage. Conversely, a broad definition could have a pervasive impact on the operation of most public and private educational institutions.

Implications

The Supreme Court's ruling that Title IX protects employees as well as students in educational institutions provides a significant clarification of the law and represents a gain for women educators because of the protection afforded by the act. Since Title IX specifically addresses educational institutions, it is viewed as one of the most effective means of addressing discriminatory practices in schools and colleges. Although the act has not been interpreted to encompass personal damage awards,[15] it does provide a private right of action[16] and a strong remedy--termination of federal funds. Furthermore, individuals are not required to exhaust local administrative remedies as required by Title VII, and the time required for resolution of complaints is shorter under the Department of Education as opposed to the Equal Employment Opportunity Commission, the administering agency for Title VII.

The North Haven case established that sex equity in employment is still a pressing legal issue. It implies that educational institutions must examine more closely their compliance efforts. Educational institutions cannot easily ignore discriminatory practices with the threat of the termination of federal funds hanging over them. The gain in employment may be short-lived, however, if the Supreme Court this term restricts challenges to specific programs receiving direct financial aid. A program specific ruling would effectively insulate from attack many of the educational activities and practices experiencing the most overt sex discrimination, such as athletics and school administration which do not receive direct financial assistance.

Title VII and Wage Discrimination

Equity in compensation continues to generate litigation and debate. Although the Equal Pay Act of 1963[17] guaranteed equal pay for equal work, the wage gap between women and men actually is wider today than in the early 1960s. Labor statistics show that women workers earn less than sixty cents for each dollar earned by male workers. Moreover, research studies indicate that variations in education, job experience, responsibilities, and other labor factors account for less than twenty-five percent and never more than fifty percent of the earnings difference.[18]

The controversial issue facing courts and policy makers today is not equal pay for equal work. Essentially, existing legislation provides a means for eradicating such inequities. The more widespread concern, however, is equal pay for work of equal value. The proponents of comparable worth, or pay equity, argue that historically women have earned less because they are concentrated in stereotyped women's jobs which have been assigned a lower value in the marketplace. Labor statistics support this contention: Fifty-four percent of women are found in jobs predominated by women,[19] with twenty-five percent of women clustered in five jobs.[20] Opponents of comparable worth, on the other hand, argue that the marketplace must drive the wage decision; economic realities of supply and demand cannot be dismissed.[21]

To combat wage discrimination, women's groups have initiated lawsuits seeking to gain judicial recognition of the comparable worth principle. The basic assumption underlying the theory is that jobs of equal value should be equally compensated. Determination of equal worth involves evaluating jobs in terms of factors such as skill, responsibility, effort,

and working conditions. One of the primary methods for accomplishing this is to assign points to the various factors and use the resulting scores to predict pay rates. In evaluating jobs, it is assumed that two dissimilar jobs having the same total points would be assigned the same pay rate.

While litigation has brought some external pressure to bear on the issue, research also continues to highlight inequities and to focus the debate. Recently, the National Academy of Sciences (NAS) concluded from an extensive study conducted for the Equal Employment Opportunity Commission that women are "systematically underpaid," and that efforts merely to ensure equal access to employment opportunities are insufficient to remedy underpayment.[22] Since all women will not have the opportunity to move into new or higher paying jobs, or the desire to change jobs, NAS recommended comparable worth as an intervention strategy where underpayment is related to sex. While recommending this approach, the Academy recognized the difficulty of ascertaining whether a salary rate includes discriminatory elements.

The complexity of determining the abstract worth of a job and of crossing job lines into different skill areas has posed a substantial barrier to courts reviewing gender-based wage discrimination claims. The more formidable obstacle, however, has been whether comparable worth claims state a cause of action under Title VII. Until the late 1970s, courts consistently had held that compensation claims under Title VII also must satisfy the "equal work" requirement of the Equal Pay Act. Conflicting lower court decisions[23] brought this issue to the Supreme Court in 1981.[24] In the following sections the basic legal issues in wage discrimination cases are highlighted and recent litigation is examined.

The Controversy: Equal Pay Act and Title VII

Two federal statutes provide remedies for sex-based wage discrimination. First, the Equal Pay Act (EPA) enacted in 1963 prohibits employers from discriminating on the basis of sex by paying different wages to employees for jobs requiring equal skill, effort, and responsibility. The key element in the law is "equal pay for equal work." In adopting the EPA, Congress scrutinized the comparable worth doctrine and rejected it in favor of the equal work standard. Although courts have not construed the equal work mandate to require identical work, they have said work must be substantially equal.

One year after enacting the Equal Pay Act, Congress passed Title VII.[25] This law prohibits discrimination in employment on the basis of race, color, national origin, religion, and sex. The judiciary has been confronted with interpreting the relationship between the sex discrimination ban of Title VII and the Equal Pay Act. Because Title VII was amended in the House of Representatives to include sex shortly before its passage, the overlapping jurisdiction of the two laws was not fully analyzed. To rectify potential inconsistencies between the laws and avoid nullification of the EPA, the Bennett Amendment was passed. The amendment specified that

> It shall not be an unlawful employment practice under the subchapter for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of such employer if such differential is authorized by the provision of [§ 206(d) of the EPA].

Section 206(d) requires equal pay for equal work unless wage differentials are attributed to four affirmative defenses--(1) seniority, (2) merit, (3) quantity or quality of product, or (4) any other factor other than

sex. The controversy that has surrounded the Bennett Amendment is whether it incorporates the equal work standard into Title VII or merely the employer's affirmative defenses. As noted earlier, most courts adopted the equal work requirement, thereby severely restricting the scope of compensation claims under Title VII.

Pre-Gunther Cases

Prior to the Supreme Court's decision in Gunther, several courts had laid the groundwork for expanding Title VII beyond the Equal Pay Act's "equal work" principle. In addition to the ninth circuit's decision in Gunther,[26] the third[27] and tenth circuits[28] and a Michigan district court[29] had embraced the notion that sex-based wage discrimination claims were not limited to unequal compensation for equal work. To illustrate, the Third Circuit Court of Appeals reviewed a case brought by female employees asserting that Westinghouse Electric Corporation had deliberately set wages of job classifications predominated by women lower than those filled by men. The court found that nothing in Title VII authorized such discrimination alleged by the plaintiffs, and concluded that intentional discrimination in formulating job classifications on the basis of sex stated a claim under Title VII.[30]

As in the third circuit ruling, each of the other cases modifying the equal work standard for wage discrimination turned on whether the plaintiffs could demonstrate intentional discrimination. Comparable worth claims, standing alone, were rejected. For example, the tenth circuit appellate court rejected a comparable worth claim advanced by nurses employed by the city of Denver.[31] The nurses argued that historically their wages had been depressed because their profession has been viewed as women's work. They urged that the worth of their jobs should be determined by comparisons with positions other than

nurses. The appellate court concluded as previous courts that the relief sought was beyond Title VII in the absence of intentional discrimination. Similarly, the eighth circuit rejected a claim by female clerical employees seeking comparison of wages with male physical plant employees. The court noted that the history of Title VII does not indicate that Congress "intended to abrogate the laws of supply and demand or other economic principles that determine wage rates for various kinds of work."[32]

Lower court rulings prior to 1981 revealed a movement away from the restrictive equal work prerequisite for Title VII compensation controversies. In these cases, differences in pay rates accompanied by evidence of discriminatory motivation were sufficient to establish a cause of action. Inequities related to the marketplace, however, were resoundingly defeated.

The Gunther Case

With conflicting lower court interpretations of the Bennett Amendment, the Supreme Court in 1981 agreed to review the Gunther case from the Ninth Circuit. In a five-to-four decision, the Court affirmed the appellate court's finding that the scope of Title VII in wage disputes is not bound by the "equal work" principle of the Equal Pay Act.[33] At the outset, the Court emphasized that the case was not based on the theory of comparable worth, but rather raised the question of whether, in the absence of equal work, intentionally establishing the wages of female employees lower than male employees presents a cognizable action under Title VII.

The Court found the Bennett Amendment to incorporate only the employer's affirmative defenses (i.e., differences in wages based on merit, seniority, productivity, or factors other than sex) and not the restriction of equal work.

In the Court's view, a narrow interpretation of the amendment would insulate "blatantly discriminatory practices from judicial redress under Title VII."[34] The Court noted:

> [A] woman who is discriminatorily underpaid could obtain no relief--no matter how egregious the discrimination might be--unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay. Thus, if an employer hired a woman for a unique position in the company and then admitted that her salary would have been higher had she been male, the woman would be unable to obtain legal redress under petitioner's interpretation. Similarly, if an employer used a transparently sex-biased system for wage determination, women holding jobs not equal to those held by men would be denied the right to prove that the system is a pretext for discrimination.[35]

In Gunther, women guards who supervised the female section of the county jail sued because they were paid less than the male guards. Although the duties of the positions were not equivalent, the women asserted that their salaries had been intentionally depressed. The evidence introduced by the female guards to support this claim was the employer's own job evaluation study. The county had evaluated the worth of both male and female positions and determined that the women guards should be paid 95 percent as much as the males. In the opinion of the court, the fact that women were paid only 70 percent as much as males could be used to substantiate intentional discrimination. The Court emphasized that evidence of discrimination in this case rested on the employer's own study not the Court's "subjective assessment of the value of the male and female guard jobs" or other statistical techniques to quantify discrimination.[36]

The justices dissenting in Gunther cautioned that the principle enunciated by the majority is a very narrow one. According to the minority opinion, a cause of action exists only if "there is direct evidence that an employer has intentionally depressed a woman's salary because she is a woman."[37] This ruling, however, may not be as restrictive as envisioned. It would appear that a broad range of discriminatory practices now can be attacked. The Supreme Court has provided an avenue to redress compensation controversies that previously were immune from judicial review. At the same time, nothing in the decision forecloses future consideration of the comparable worth principle.

Post-Gunther Litigation

The majority in Gunther, by its own admission, did not decide "the contours of lawsuits challenging sex discrimination in compensation under Title VII."[38] The future direction of this litigation will be shaped by the decisions of lower federal courts. From the legal decisions to date, courts have either relied on the Gunther intentional discrimination theory or the traditional equal work standard.[39] No substantial movement has been made toward directly recognizing the comparable worth concept.

A Michigan federal district court decision is representative of recent comparable worth litigation.[40] In this case, plaintiffs sought relief under Title VII, contending that female matrons' jobs and male correction officers' jobs were of comparable and equal worth to the county. Relying on Gunther, the court held that the comparable worth principle did not constitute an independent cause of action. The court concluded from a review of legal precedents that a theory of recovery that does not assert the equal work

standard must be premised upon intentional discrimination. Moreover, the court reiterated the position of other courts that it could not, and would not, evaluate two dissimilar jobs and determine their worth to the employer.

A recent Wisconsin federal district court decision illustrates the plaintiff's burden of proof in a comparable worth challenge.[41] In this case, the City of Madison public health nurses alleged that their salaries had been undervalued solely because of their sex. Specifically, they claimed that the wage differential between public health nurses, primarily women, and sanitarians, primarily men, was attributable to long-standing practices of devaluing the worth of positions filled by women. To establish a prima facie case of sex-based wage discrimination, the court held that the plaintiffs must show that

> (1) they are members of a protected class (2) occupying a sex-segregated job classification (3) that is paid less than a (4) sex-segregated job classification occupied by men and (5) that the two job classifications at issue are so similar in their requirements of skill, effort, and responsibility, and working conditions that it can reasonably be inferred that they are of comparable value to an employer.[42]

According to the court, the fifth factor of similar skill, effort, responsibility, and working conditions must be present.[43] Without this factor, there is no showing of a prima facie case. The court noted that this method of analysis does not require the court to determine the abstract worth of a position or to cross job lines; it merely permits plaintiffs "to show a substantial similarity of work requirements and work conditions as to raise the presumption of illegal sex discrimination."[44]

From the evidence presented in this case, the court concluded that the plaintiffs had established a prima facie case, and the burden shifted to the employer to show a nondiscriminatory reason for its action. The reasons advanced by the employer for the wage differential included primarily market-related conditions such as higher wages paid by other employers and the difficulty in recruitment and retention of qualified persons. Finding these reasons sufficient to rebut the presumption of discrimination, the court noted that, "Under Title VII, an employer's liability extends only to its own acts of discrimination. Nothing in the Act indicates that the employer's liability extends to conditions of the marketplace which it did not create."[45]

Although the district court articulated factors to be considered in assessing a comparable worth claim, the overall analysis does not extend the Gunther ruling. It is clear that sex-segregated job classifications alone do not raise the presumption of wage discrimination; similarity in work requirements and conditions is the crucial factor. Even if a prima facie case is established, intentional discrimination still must be shown. This may be a difficult burden to sustain since the marketplace argument can successfully rebut discriminatory intent.

Implications

While the legal basis for challenging wage discrimination has been expanded, numerous unresolved issues remain. The United States Supreme Court has held that intentionally setting the wages of females below the compensation level of males comes within the protection of Title VII. Among the questions this ruling raises is what evidence substantiates intentional discrimination. It is clear courts will not be placed in the

position of assigning a value to jobs. In Gunther, the Court accepted as direct evidence the employer's own job evaluation study. This does not necessarily portend well for employers in the future who through their own studies attempt to redress pay differentials. A job evaluation study could actually expose the employer to liability. While employers' studies have been accepted as direct evidence, will the same weight be accorded to studies conducted by plaintiffs? Employers certainly will argue that these job evaluations are unreliable. Considering the imprecise and subjective nature of job comparisons, how will reliability be determined.

Concern has been raised as to the types of defenses an employer can offer to refute discrimination charges. If a presumption of wage discrimination is established, what defenses are legitimate? The Bennett Amendment identifies four justifications, however, the fourth defense, a "factor other than sex," may encompass a broad range of practices. For example, lower federal courts have accepted marketplace conditions as beyond an employer's control. Because of the significant economic implications, it appears that this will remain a strong defense. Courts, however, may not be as sympathetic to a defense based on traditional industry practices, especially where there has been a continuing structure of sex discrimination.[46]

The pay equity issue will not disappear. Although the theory of comparable worth has not been upheld by the judiciary, school administrators should examine existing pay classifications that are predominated by either females or males. Many positions in a school system such as secretaries, librarians, custodians, cafeteria workers, and maintenance workers may be subject to sex-biased charges. Pay differences that are not related to work requirements and work conditions should be addressed.

Concluding Remarks

The expanded interpretation of both Title IX and Title VII clearly signal that sex equity in employment still is an issue that must be addressed. The door has been opened for a new series of legal challenges. Title IX provides another avenue for confronting discriminatory employment practices,while Title VII offers a means for redressing compensation inequities heretofore beyond judicial review. For school administrators, this means thatdiscriminatory practices that are not identified and remediated create a greater potential for liability.

REFERENCES

1. 20 U.S.C. § 1681(a).

2. 102 S. Ct. 1912 (1982).

3. See Seattle University v. HEW, 621 F.2d 992 (9th Cir. 1980); Islesboro School Committee v. Califano, 593 F.2d 424 (1st Cir. 1979), cert. denied, 444 U.S. 972 (1979); Junior College Dist. v. Califano, 597 F.2d 119 (8th Cir. 1979), cert. denied, 444 U.S. 972 (1979); Romeo Community Schools v. HEW, 600 F.2d 581 (6th Cir. 1979), cert. denied, 444 U.S. 972 (1979); Grove City College v. Harris, 500 F. Supp. 253 (W.D. Pa. 1980); Kneeland v. Bloom Township High School Dist., 484 F. Supp. 1280 (N.D. Ill. 1980); McCarthy v. Burkholder, 448 F. Supp. 41 (D. Kan. 1978).

4. See Dougherty County School System v. Harris, 622 F.2d 735 (5th Cir. 1980); North Haven Bd. of Educ. v. Hufstedler, 629 F.2d 773 (2d Cir. 1980).

5. 102 S. Ct. at 1920.

6. Hillsdale College v. Department of Health, Education and Welfare, 696 F.2d 418 (6th Cir. 1982). See Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981), cert. denied, 102 S. Ct. 1976 (1982) in which the plaintiff failed to establish that she had suffered sex discrimination in a specific educational program receiving federal financial assistance. The law school's receipt of federal funds for a work-study program was deemed insufficient to invoke the protection of Title IX.

7. According to the sixth circuit court's ruling, Hillsdale College still is subject to loss of its student aid if the college continues to refuse to sign an "assurance of compliance." A recent report indicates

that Hillsdale College plans to ask the Supreme Court to review the appellate decision. See Education Week, vol. II, no. 26 (March 23, 1983): 17.

8. Bennett v. West Texas State University, 525 F. Supp. 77 (N.D. Tex. 1981), rev'd , 698 F.2d 1215 (5th Cir. 1983).

9. Id. at 81.

10. University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982). See also Othen v. Ann Arbor School Bd., 507 F. Supp. 1376 (E.D. Mich. 1981), one of the first court decisions to limit the scope of Title IX to programs receiving direct federal aid. The Sixth Circuit Court of Appeals recently upheld this case but on grounds other than Title IX, ___ F.2d ___ (6th Cir. 1983).

11. Grove City College v. Bell, 687 F.2d 684 (3d Cir. 1982), cert. granted, 51 U.S.L.W. 3611 (1983); Haffer v. Temple University, 688 F.2d 14 (3d Cir. 1982).

12. 687 F.2d 684 (3d Cir. 1982).

13 688 F.2d 14 (3d Cir. 1982).

14. 51 U.S.L.W. 3611 (1983).

15. See Lieberman v. University of Chicago, 660 F.2d 1185 (7th Cir. 1981), cert. denied, 102 S. Ct. 1993 (1982).

16. Cannon v. University of Chicago, 441 U.S. 677 (1979).

17. 29 U.S.C. § 206 (d) (1976).

18. See Donald J. Treiman and Heidi I. Hartmann, eds., Women, Work, and Wages: Equal Pay for Jobs of Equal Value (Washington, D.C.: National Academy Press, 1981, pp. 13-43.

19. Id. at 28.

20. Ruth G. Blumrosen, "Wage Discrimination, Job Segregation and Women Workers," Women's Rights Law Reporter, vol. 6, no. 1-2 (Fall/Winter 1979-80):19-57. The five jobs are secretary-stenographer, household worker, elementary school teacher, bookkeeper, and waitress.

21. See Lemons v. City and County of Denver, 620 F.2d 228 (10th Cir. 1980), cert. denied, 101 S. Ct. 244 (1980); Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977).

22. Treiman and Hartmann, Women, Work, and Wages, pp. 66-67.

23. International Union of Electrical Workers v. Westinghouse Electric, 631 F.2d 1094 (3d Cir. 1980); Gunther v. County of Washington, 623 F.2d 1303 (9th Cir. 1980); Christensen v. State of Iowa, 563 F.2d 353 (8th Cir. 1977); Gerlach v. Michigan Bell Telephone Co., 501 F. Supp. 1300 (E.D. Mich. 1980); Wetzel v. Liberty Mutual Insurance Company, 449 F. Supp 397 (W. D. Pa. 1978); Molthan v. Temple University, 442 F. Supp. 448 (E.D. Pa. 1977).

24. County of Washington v. Gunther, 452 U.S. 161 (1981).

25. 42 U.S.C. § 2000e et seq., as amended (1976).

26. Gunther v. County of Washington, 623 F.2d 1303 (9th Cir. 1980), aff'd, 452 U.S. 161 (1981).

27. International Union of Electrical Workers v. Westinghouse Electric, 631 F.2d 1094 (3d Cir. 1980).

28. Fitzgerald v. Sirloin Stockade, 624 F.2d 945 (10th Cir. 1980).

29. Gerlach v. Michigan Bell Telephone Co., 501 F. Supp. 1300 (E.D. Mich. 1980).

30. 631 F.2d at 1107.

31. Lemons v. City and County of Denver, 620 F.2d 228 (10th Cir. 1980), cert. denied, 101 S. Ct. 244 (1980).

32. Christensen v. State of Iowa, 563 F.2d 353, 356 (8th Cir. 1977).

33. County of Washington v. Gunther, 452 U.S. 161 (1981).

34. Id. at 179.

35. Id. at 178-79.

36. Id. at 181.

37. Id. at 183.

38. Id. at 181.

39. See, for example, Thompson v. Sawyer, 678 F.2d 257 (D.C. Cir. 1982); Wilkins v. University of Houston, 654 F.2d 388 (5th Cir. 1981); Melanson v. Rantoul, 536 F. Supp. 271 (D.R.I. 1982).

40. Power v. Barry County, Michigan, 539 F. Supp. 721 (W.D. Mich. 1982).

41. Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wis. 1982).

42. Id. at 445.

43. "Similar" as used by the district court does not infer equal; it is a weighing of the various work requirements and conditions.

44. 536 F. Supp. at 446.

45. Id. at 447.

46. See Thompson v. Sawyer, 678 F.2d 257 (D.C. Cir. 1982).